

**REMARKS**

Reconsideration is requested.

Claims 1-7, 10-39 and 41-46 are pending. Claims 34-37 have been withdrawn from consideration.

Reconsideration of the Examiner's withdrawal of the subject matter of claims 34-37 from consideration is requested along with examination of all of the claims. Claim 34 and 35 define compounds of claim 1 wherein  $R_6$  is a thiophene derivative. The Examiner has failed to demonstrate, such as by citation to prior art, that there is a lack of unity of invention as between the subject matter of claims 34 and 35 and the remaining claims which have been searched and examined. Moreover, claim 36 defines compounds of claim 1 wherein certain recited groups are not hydrogen. The compounds of claim 36 do not define compounds "that have different core structures" from the compounds which have been examined, as asserted by the Examiner on page 4 of the Office Action dated September 29, 2009. The Examiner has failed to demonstrate, such as by citation to prior art, that there is a lack of unity of invention as between the subject matter of claim 36 and the remaining claims which have been searched and examined. Further, the Examiner has failed to demonstrate, such as by citation to prior art, that there is a lack of unity of invention as between the subject matter of claim 37 and the remaining claims which have been searched and examined.

Examination of all of the claimed subject matter is requested.

The specification and Claim 1 have been revised, without prejudice, to correct the structure of formula (I). No new matter has been added. One of ordinary skill in the

art will appreciate from the specification that the structure of formula (I) contains a pyrrolo [2, 3b]-pyrazine core, as provided in the above amendments.

A copy of the non-U.S. patent literature listed on the previously-filed PTO 1449 Form is being filed herewith along with a new PTO 1449 Form listing same. Return of an initialed copy of the attached PTO 1449 Form is requested, pursuant to MPEP § 609.

The Examiner is requested to hold the provisional obviousness-type double patenting rejection of claims 1-7, 10-33, 38, 39 and 41-46 over claims 34-40 of copending Application No. 11/665,294, in abeyance until such time as allowable subject matter is identified - at which time the applicants will consider a further response.

The Section 112, second paragraph, rejection of claims 1-4 and 38-46 is obviated by the above amendments. Reconsideration and withdrawal of the rejection are requested in view of the above.

The Section 103 rejection of claims 1, 2, 4-7, 10-33, 38, 39 and 41-46 over Davis (Tetrahedron, 48, pp 939-952 (1992)), is traversed. Reconsideration and withdrawal of the rejection are requested as the Examiner is not believed to have established a *prima facie* case of obviousness. More specifically, the rejection is based on the unsubstantiated assertion by the Examiner that the unsubstituted pyrrol-pyrazine of the cited art would have been expected to have had similar properties to the methyl-substituted core of the claims. The Examiner fails to indicate why one of ordinary skill in the art would have allegedly been motivated by the cited art to have made the claimed compounds. The Examiner's general assertion that "hydrogen and methyl substituents are obvious homologous variants of each other, the substitution of one group for

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another would have been *prima facie* obvious to one of ordinary skill in the art" (see sentence spanning pages 9-10 of the Office Action dated September 29, 2009) should not be sufficient to establish a *prima facie* case of obviousness.

Withdrawal of the Section 103 rejection is requested.

The claims are submitted to be in condition for allowance and a Notice to that effect is requested. The Examiner is requested to contact the undersigned, preferably by telephone, in the event anything further is required.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

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